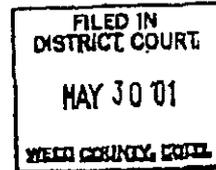


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District Court, Water Division No. 1, Colorado

Post Office Box C
Greeley, Colorado 80632



Concerning the Application for Water Rights of:

LEO J. HINDERY AND DEBORAH D. HINDERY

In Douglas and El Paso Counties

▲ COURT USE ONLY ▲

Doran L. Matzke
Sherman & Howard L.L.C
633 17th Street, # 3000
Denver, CO 80202
Phone 303 297-2900
Fax 303 298-0940
E-Mail: dmatzke@sah.com
Atty. Reg. #: 17906

Case Number: 2000CW079
CW:
Div.: Ctrm.:

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

This matter is before the Court upon the application by Leo J. Hindery and Deborah D. Hindery (the "Applicants") for quantification of amounts of groundwater for withdrawal from the Denver Basin aquifers and for adjudication of exempt wells (the "Application"). The Court having considered the Application, and other materials, hereby makes the following findings of fact, conclusions of law, judgment and decree.

FINDINGS OF FACT

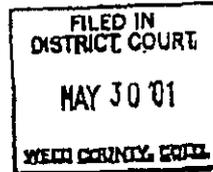
1. The Applicants are Leo J. and Deborah D. Hindery, The Lazy H Ranch, 9663 East Palmer Divide Road, Larkspur, Colorado 80118. Applicants filed the Application on May 31, 2000

2. Timely and adequate notice of these proceedings has been given in the manner prescribed by law. The Court has jurisdiction over all persons who have standing to appear as parties, whether they have appeared or not.

u

District Court, Water Division No. 1, Colorado

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Concerning the Application for Water Rights of:

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Recorded Electronically
ID 20180105248
COUNTY _____
DATE 10-20-18 TIME _____

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District Court, Water Division No. 1, Colorado

Post Office Box C
Greeley, Colorado 80632

FILED IN
DISTRICT COURT
MAY 30 '01
WEST COUNTY, COLORADO

Concerning the Application for Water Rights of:

LEO J. HINDERY AND DEBORAH D. HINDERY

In Douglas and El Paso Counties

▲ COURT USE ONLY ▲

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FINDINGS OF FACT

1. The Applicants are Leo J. and Deborah D. Hindery, The Lazy H Ranch, 9663 East Palmer Divide Road, Larkspur, Colorado 80118. Applicants filed the Application on May 31, 2000

2. Timely and adequate notice of these proceedings has been given in the manner prescribed by law. The Court has jurisdiction over all persons who have standing to appear as parties, whether they have appeared or not.

3. The land and water rights involved herein are not included within any designated ground water basin, and the Water Court has jurisdiction over the subject matter of the Application.

4. No Statements of Opposition were filed

5. On August 13, 2000, the Office of the State Engineer issued a Determination of Facts Report on the Application pursuant to C.R.S. § 37-92-302(2). A Summary of Consultation was held on August 23, 2000. These reports have been considered by the Court in accordance with C.R.S. §§ 37-92-302(2)(a) and 37-92-305(6)(b).

6. In their Application, the Applicants sought an adjudication of rights to all of the ground water from the not nontributary Dawson aquifer and the nontributary Denver, Arapahoe, and Laramie Fox Hills aquifers underlying approximately 165 acres, described in Attachment A of the Application, and located in a portion of Sections 30 of Township 10 South, Range 65 West of the 6th P.M. The legal description of this parcel (the "Subject Property") is attached to this decree as Exhibit A. A map of the Subject Property is attached to this decree as Exhibit B. The parcel identified by the reference "New parcel purchased by Hindery," and on which "165± acres" is typed is the Subject Property. The Subject Property is owned by the Applicants and is not subject to any lien, mortgage or deed of trust, therefore notice pursuant to C.R.S. § 37-92-302(2)(b) was not required.

7. Applicants will divert the waters from the not nontributary Dawson and nontributary Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Subject Property by wells which may be drilled at any location on the Subject Property.

8. The source of ground water to be withdrawn from the Dawson aquifer is not nontributary as defined in C.R.S. § 37-90-103(10.7). Withdrawal of ground water from this aquifer will, within 100 years, deplete the flow of a natural stream at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal, and therefore will require a court approved plan for augmentation prior to use, pursuant to the requirements of C.R.S. § 37-90-137(9)(c).

9. The source of groundwater to be withdrawn from the Denver, Arapahoe, and Laramie-Fox Hills aquifers is nontributary groundwater as defined in C.R.S. § 37-90-103(10.5). Withdrawal of groundwater from these aquifers will not, within 100 years, deplete the flow of a natural stream at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal. Pursuant to C.R.S. § 37-90-137(9)(b) and the Denver Basin Rules, no more than 98% of the nontributary ground water withdrawn annually from these aquifers shall be consumed.

10. As set forth in the State Engineer's Determination of Facts Report, the depths of each of the aquifers which are the subject of the Application are as follows:

<u>Aquifer</u>	<u>Depth from Land Surface</u>
Dawson	70 to 1,120 feet
Denver	1,000 to 2,040 feet
Arapahoe	1,900 to 2,620 feet
Laramie-Fox Hills	2,870 to 3,320 feet

11. The quantity of ground water, exclusive of artificial recharge, underlying the Subject Property, is determined based on the average specific yield of the saturated aquifer materials and the average thickness of the saturated aquifer materials underlying the Subject Property. Subject to proof of either a greater or smaller specific yield or average saturated thickness pursuant to retained jurisdiction, the following are the quantities of ground water available for withdrawal from each aquifer and the specific aquifer characteristics used by the Office of the State Engineer to calculate these quantities:

<u>Aquifer</u>	<u>Quantity (AF)</u>	<u>Average Specific Yield</u>	<u>Average Thickness (feet)</u>
Dawson	12,870	20%	390
Denver	10,631	17%	379
Arapahoe	7,966	17%	284
Laramie-Fox Hills	4,905	15%	200

12. In determining the amount of ground water available for withdrawal annually from these aquifers, the provisions of C.R.S. § 37-90-137(4) must be applied, and pursuant to C.R.S. § 37-90-137(4)(b)(I) annual withdrawals shall be allowed on the basis of an aquifer life of 100 years.

13. Subject to further findings under retained jurisdiction and pursuant to the Denver Basin Rules, the allowed average annual amounts of water available for withdrawal from each of the aquifers are as follows:

<u>Aquifer</u>	<u>Annual Amount (AF)</u>
Dawson	128.7
Denver	106.3
Arapahoe	79.7
Laramie-Fox Hills	49.5

14 Applicants seek a decree designating all future wells within each aquifer on the Subject Property as a Well Field as that term is defined in the Rules and Regulations Applying to Well Permits to withdraw Ground Water Pursuant to C.R.S. § 37-90-137(4), and 2 C.C.R. 402-7 in effect on this date, and as such Applicants may use all future wells within each aquifer on the Subject Property for withdrawal of up to the full cumulative amount by flow rate and volume of water which may be lawfully withdrawn from that aquifer from any one or more of those wells.

15. All wells on the Subject Property may be used to withdraw the estimated amounts of groundwater at rates of flow necessary to efficiently withdraw the entire amounts decreed to be available. Applicants waived the 600 foot spacing rule described in C.R.S. § 37-90-137(2) for wells located on the Subject Property.

16. Applicants' allowed annual amount of withdrawal may exceed the allowed average annual amount of withdrawal for each aquifer as decreed herein as long as the total volume of water withdrawn does not exceed the product of the number of years since the date of the issuance of the first well permit therefor or the date of this decree, whichever is earlier, times the allowed average annual amount of withdrawal for each aquifer as that amount may be adjusted under this decree.

17. The waters of all of the Denver Basin aquifers claimed by Applicants herein may be, and Applicants intend that they be used, and Applicants shall have the right of use, reuse, succession of uses, and after use, the waters may be leased, sold, or disposed of for the following beneficial uses: municipal, domestic, industrial, commercial, irrigation, agricultural, livestock watering, recreational, fish and wildlife, fire protection and any other beneficial uses. Said water will be produced for immediate application to said uses, both on and off the Subject Property, for storage and subsequent application to beneficial uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources and for augmentation purposes. Failure to use, reuse or recapture such water, including return flows, shall not be deemed a forfeiture or abandonment of the right to such use, reuse, or recapture.

18 The Office of the State Engineer must issue well permits in accordance with C.R.S. § 37-90-137(4) and/or (10). Each well should be equipped with a properly installed and maintained totalizing flow meter, and the Applicants may be required to submit diversion records to the Division Engineer or his representative on an annual basis or as otherwise requested by the Division Engineer

CONCLUSIONS OF LAW

19. The Court concludes that the Application is one contemplated by law and this Court has exclusive jurisdiction over this proceeding pursuant to C.R.S. §§ 37-92-203, 37-90-137(6), and 37-92-302 through 305

20 The Applicants have complied with all of the requirements of C.R.S. § 37-90-137(4), full and adequate notice has been given, and no additional notice is required for the determination of the Applicants' right to the amount of water decreed herein, provided, however, that in the event Applicants seek to enlarge the amount of water to which they are entitled in any subsequent proceedings pursuant to the provisions for retained jurisdiction in Paragraph 37 to an amount larger than the amounts set forth in this decree, the Court may determine at that time whether additional notice of such enlarged claim will be required.

21. The issuance of a decree confirming Applicants' right to divert and use ground water from the Denver Basin aquifers beneath the Subject Property, pursuant to C.R.S. § 37-90-137(4), will not cause material injury to the water rights of others and should be granted, subject to the provisions of this decree. The amount of water confirmed in this decree is lawfully available to Applicants and the annual withdrawals are based on an aquifer life of one hundred years.

22. The rights to ground water determined herein are vested rights and no subsequent showings or findings of reasonable diligence under C.R.S. § 37-92-301(4) shall be required.

23. The Court shall retain jurisdiction over this matter to make adjustments to the amount of water available for withdrawal annually as set forth in Paragraph 13 and to conform to the actual aquifer characteristics encountered upon the drilling of wells. This retained jurisdiction may be invoked under Paragraph 37

24. The State Engineer may lawfully be required under the terms of this ruling to issue permits for construction of Applicants' proposed wells in the Denver Basin aquifers.

25. Applicants have sustained their burden of proving that the planned withdrawal of an amount of water as determined in accordance with Paragraph 13 will comply with the provisions of C.R.S. § 37-90-137(4).

JUDGMENT AND DECREE

It is hereby ordered and decreed as follows:

26 The Findings of Fact and Conclusions of Law set forth in Paragraph 1 through 25, above, are incorporated herein by reference

27. Applicants' request for a determination of water rights is granted subject to the limitations set forth in this decree

28. A decree is hereby granted confirming that the total amount of water which the Applicants are entitled to from the Denver Basin aquifers beneath the Subject Property is as follows:

<u>Aquifer</u>	<u>Annual Amount</u>
Dawson	128.7
Denver	106.3
Arapahoe	79.7
Laramie-Fox Hills	49.5

29. These water rights may be used for municipal, domestic, agricultural, industrial, commercial, irrigation, livestock watering, recreational, fish and wildlife, fire protection, augmentation, substitution, and exchange uses. The water may be used through immediate application to beneficial uses, for storage and subsequent application to beneficial uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes. The water may be withdrawn through any wells drilled on the Subject Property. For purposes of water withdrawn from the Dawson aquifer, other than through wells permitted subject to C.R.S. § 37-92-602, such withdrawal will be allowed provided an augmentation plan has been decreed pursuant to Paragraph 8 and C.R.S. § 37-90-137(9)(c).

30. - Each of the requirements of C.R.S. § 37-90-137(4) has been complied with. Water is available from the Denver Basin aquifers beneath the Subject Property and the withdrawal, through wells to be drilled on the Subject Property, of the quantities of water determined pursuant to Paragraph 13 will not result in material injury to other vested water rights.

31 Applicants shall apply to the State Engineer for a well permit when prepared to drill a well and that permit shall be issued promptly with the conditions no more burdensome than those required herein.

32. All wells within each aquifer on the Subject Property shall constitute a Well Field for that aquifer as that term is defined in the Rules and Regulations Applying to Well Permits to Withdraw Ground Water Pursuant to C.R.S. § 37-90-137(4), 2 C.C.R. 402-7 in effect on this date,

CENTRAL FILES

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JUL 06 2001

WATER RIGHTS DIVISION
STATE ENGINEER
COLO

Leo J. & Deborah D. Hindery
Findings of Fact, Conclusions of Law,
Judgment and Decree
Case No. 2000CW079
Page 7

and as such, Applicants may use all wells drilled on the Subject Property for the withdrawal of up to the full cumulative amount of water which may be lawfully withdrawn from any one or more of those wells.

33 Applicants' allowed annual amount of withdrawal may exceed the allowed average annual amount of withdrawal decreed herein as long as the total volume of water withdrawn does not exceed the product of the number of years since the date of issuance of the first well permit therefor or the date of this decree whichever is earlier, times the allowed average annual amount of withdrawal decreed herein as that amount may be adjusted under this decree.

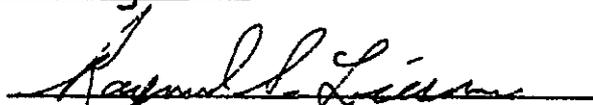
34 The Applicants will comply with all valid rules and regulations of the Office of the State Engineer

35 With the exception of wells permitted pursuant to C.R.S. § 37-92-602, the Dawson aquifer water in the Subject Property cannot be used until Applicants obtain judicial approval of a plan for augmentation pursuant to C.R.S. § 37-90-137(9). The Court retains jurisdiction in this matter for the purposes of adjudicating that plan for augmentation.

36. The State Engineer shall consider the water rights granted herein as valid and shall consider the water decreed to Applicants as a vested property right. See C.R.S. §37-92-305(11).

37. The Court retains jurisdiction of this matter pursuant to the provisions of C.R.S. § 37-92-305(11), to provide for the adjustment of the amount of water available for annual withdrawal to conform to actual local aquifer characteristics as determined from analysis of data obtained when the wells or test holes are drilled

Done this 30 day of May, 2001.


Water Referee

No protest was filed in this matter within the time prescribed by law and, accordingly, the foregoing Ruling is confirmed, approved and made the judgment and decree of the Court

Date: 11 29 2001


Water Judge

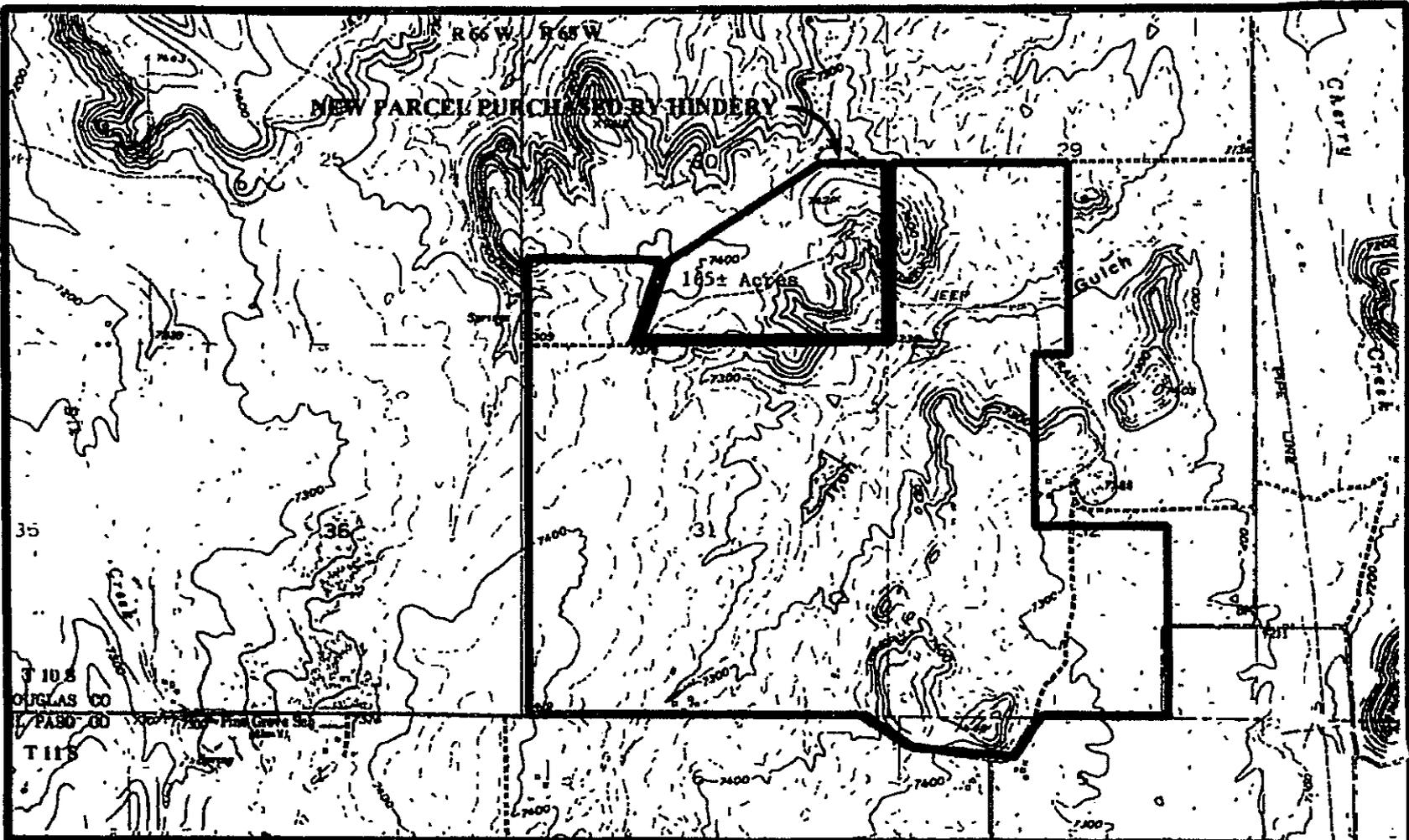
EXHIBIT A

Parcel A:

THE EAST ¼ OF THE SOUTHEAST ¼, THE SOUTHWEST ¼ OF THE SOUTHEAST ¼, THE NORTHWEST ¼ OF THE SOUTHEAST ¼ AND A PORTION OF THE EAST ¼ OF THE SOUTHWEST ¼, ALL LYING SOUTH AND EAST OF THE COUNTY ROAD IN SECTION 30, TOWNSHIP 10 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, FURTHER DESCRIBED AS FOLLOWS

FOR PURPOSES OF THIS DESCRIPTION, BEARINGS ARE BASED ON THE EAST LINE OF SAID SECTION 31, AS MONUMENTED AT THE NORTHEAST CORNER BY A 2-1/2" ALUMINUM CAPPED MONUMENT, LS 29052, AND AT THE SOUTHEAST CORNER BY A G L O STONE MONUMENT, SAID LINE BEARS SOUTH 00 DEGREES 00 MINUTES 03 SECONDS EAST, FOR 5292.98 FEET

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 30, THENCE NORTH 89 DEGREES 57 MINUTES 54 SECONDS WEST, AND ALONG THE SOUTH LINE OF SAID SECTION 30, FOR 2639.23 FEET TO THE SOUTH ¼ CORNER OF SAID SECTION 30, THENCE NORTH 89 DEGREES 57 MINUTES 54 SECONDS WEST, AND CONTINUING ALONG THE SOUTH LINE OF SAID SECTION 30, FOR 1092.28 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE COUNTY ROAD ESTABLISHED BY COUNTY ORDINANCE ON JULY 10, 1886 AND PHYSICALLY EVIDENCED BY AN EXISTING FENCE LINE AND RECORDED IN PLAT BOOK 3 AT PAGE 6; THENCE NORTH 23 DEGREES 09 MINUTES 19 SECONDS EAST, AND ALONG SAID RIGHT OF WAY LINE, FOR 1279.87 FEET, THENCE NORTH 57 DEGREES 50 MINUTES 54 SECONDS EAST, AND ALONG SAID RIGHT OF WAY LINE, FOR 2615.19 FEET; THENCE NORTH 20 DEGREES 26 MINUTES 16 SECONDS EAST, AND ALONG SAID RIGHT OF WAY LINE, FOR 89.71 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST ¼ OF SAID SECTION 30; THENCE SOUTH 89 DEGREES 31 MINUTES 01 SECONDS EAST (AND DEPARTING SAID RIGHT OF WAY LINE), ALONG SAID NORTH LINE OF THE SOUTHEAST ¼, FOR 609.11 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF THE COUNTY ROAD ESTABLISHED BY COUNTY ORDINANCE ON OCTOBER 11, 1895, AND RECORDED IN PLAT BOOK 3 AT PAGE 2, THENCE SOUTH 55 DEGREES 46 MINUTES 29 SECONDS EAST, ALONG SAID RIGHT OF WAY LINE FOR 55.81 FEET, THENCE SOUTH 89 DEGREES 41 MINUTES 25 SECONDS EAST, ALONG SAID RIGHT OF WAY LINE, FOR 331.78 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 30, THENCE SOUTH 00 DEGREES 05 MINUTES 34 SECONDS WEST, AND ALONG SAID EAST LINE OF SECTION 30, FOR 2616.50 FEET TO THE POINT OF BEGINNING.



9908111

FIGURE 1
LOCATION MAP
HINDERY PROPERTY

EXHIBIT B



SCALE 1" = 2000' (1:1111)

HISBOP BROGDEN ASSOCIATES, INC.